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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

AARON JAY GARNICA,

Defendant and Appellant.

F077720

(Super. Ct. Nos. F17904203,  
F17907462)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. Michael G. Idiart, Judge.

William D. Farber, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Detjen, Acting P.J., Franson, J. and Smith, J.

## INTRODUCTION

On July 20, 2017, appellant, Aaron Jay Garnica, was charged in a criminal complaint in case No. F17904203 (the first case) with second degree robbery (Pen. Code, § 211; count 1),<sup>1</sup> one prior serious felony conviction within the meaning of the three strikes law (§§ 667, subds. (c)-(i) & 1170.12, subds. (a)-(d)), and enhancements for having a prior serious felony conviction (§ 667, subd. (a)), and a prior prison term (§ 667.5, subd. (b)).

On December 22, 2017, Garnica was charged in a new criminal complaint in case No. F17907462 (the second case) with possession of a weapon while an inmate in a penal institution (§ 4502, subd. (a); count 1).<sup>2</sup> He was further charged with the same enhancements for having a prior serious felony conviction and a prior prison term as in the first complaint.

Garnica executed felony advisement, waiver of rights, and plea forms in both cases that set forth the allegations he was admitting. Garnica expressly waived his rights in each form pursuant to *Boykin v. Alabama* (1969) 395 U.S. 238 and *In re Tahl* (1969) 1 Cal.3d 122 (*Boykin/Tahl*). Garnica acknowledged on the change of plea form in case No. F17904203 that he was admitting the robbery allegation and the prior serious felony allegation as a strike prior and as a serious felony enhancement. He also acknowledged he was receiving a sentence of nine years — the mitigated term (two years), doubled pursuant to the three strikes law, plus the prior serious felony enhancement (five years). In case No. F17907462, Garnica acknowledged on the change of plea form that he was admitting possession of a weapon in jail and would receive a sentence of two years consecutive to his sentence in the first case.

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<sup>1</sup> All statutory references are to the Penal Code.

<sup>2</sup> A third case involved an unrelated misdemeanor allegation that was subsequently dismissed.

At the change of plea hearing, Garnica's attorney stated her client was withdrawing his previous not guilty pleas in both cases and entering a plea of no contest to the robbery and possession of a weapon in jail allegations. He was admitting the prior serious felony conviction enhancement. Garnica would receive a prison term of nine years on the first case and a consecutive term of two years on the second case.

The court established that Garnica had read and understood his constitutional rights, was waiving those rights, and had executed the waiver of rights form. The court reviewed and received a waiver from Garnica. The court advised Garnica of the immigration consequences of his plea. The court told Garnica that admitting the robbery allegation constituted a prior serious felony under the three strikes law. Garnica pled no contest to robbery. Garnica admitted the prior serious felony conviction enhancement. The court advised Garnica that he would receive a term of two years for robbery, doubled under the three strikes law to four years, plus a consecutive term of five years for the enhancement for a total sentence in the first case of nine years. Garnica pled no contest to possession of a weapon in jail and was informed he would receive a consecutive term of two years for that conviction. The parties stipulated to a factual basis for the plea.<sup>3</sup>

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<sup>3</sup> According to the probation officer's report which was based on the report of the Fresno Police Department, Garnica was seen in a security video driving up to a food store and walking into it at 5:50 p.m. on June 17, 2017. Garnica walked up to the clerk and asked for two cigars. As the clerk rang up the charge on the cash register, Garnica reached over the counter with his left hand and grabbed money inside the register. The clerk attempted to close the cash register door and told Garnica to stop. Garnica reached over the counter and grabbed the cash drawer with both hands, ripping out wires with his hand to accomplish his theft. The stolen cash was estimated at \$500 and the cash register was valued at \$2,000. Garnica was identified by the clerk and later arrested. After being advised of his rights pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436, Garnica admitted he was the robber, acted in the heat of the moment, and that he was on " 'Hella methamphetamine and shit.' "

In the second case, a correctional officer conducted a routine pat down search of Garnica at 8:35 a.m. on December 20, 2017. The officer found a hard object in Garnica's left front jumpsuit pocket. Garnica said it was nothing. When the officer removed the

The court granted the People's motion to dismiss the prior prison term enhancement and an unrelated misdemeanor case.

At the sentencing hearing on June 18, 2018, the court denied probation and struck one of the prior serious felony allegations. The court imposed a sentence for robbery of two years, doubled to four years pursuant to the three strikes law, and a sentence of five years for the prior serious felony conviction enhancement. The court imposed a consecutive sentence of two years for Garnica's possession of a weapon in jail. Garnica's total sentence was 11 years. The court imposed a restitution fine of \$1,000 and other miscellaneous fees and fines. Garnica was granted physical custody credits of 339 days, conduct credits of 50 days, and total custody credits of 389 days.<sup>4</sup>

Garnica failed to obtain a certificate of probable cause.<sup>5</sup> Appellate counsel has filed a brief seeking independent review of the case by this court pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

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object, she discovered it was a weapon made of five inches of sharpened plastic. Garnica demanded the weapon be returned to him.

<sup>4</sup> The abstract of judgment set forth fewer total custody credits than the court announced. Responding to a letter from counsel, the court corrected its abstract of judgment.

<sup>5</sup> As we view the record, Garnica did not agree to a "lid sentence" in which the trial court had discretion to enter a sentence of less than 11 years. (See *People v. Buttram* (2003) 30 Cal.4th 773, 776, 783-785 [no certificate of probable cause necessary where defendant agrees to a maximum or lid sentence and trial court still has discretion to impose a sentence less than the lid].) Garnica agreed to a total sentence of nine years in the first case, including a five-year sentence for the prior serious felony conviction enhancement, plus a consecutive two-year sentence for possession of a weapon in jail. This was a stipulated sentence. Defendants are estopped from complaining about a sentence when they agree to plead guilty to a specified sentence, as occurred here. Defendants who receive the benefit of their bargain are not allowed to trifle with the courts. (*People v. Hester* (2000) 22 Cal.4th 290, 295.) Because Garnica failed to obtain a certificate of probable cause, he has no basis upon which to challenge the sentence the trial court imposed.

### **APPELLATE COURT REVIEW**

Garnica's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court review the record independently. (*Wende, supra*, 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating Garnica was advised he could file his own brief with this court. By letter on November 13, 2018, we invited Garnica to submit additional briefing. To date, he has not done so.

After independent review of the record, we conclude there are no reasonably arguable legal or factual issues.

### **DISPOSITION**

The judgment is affirmed.